

names, and service addresses.” As noted above, Verizon has not submitted any E911 listing data that contains the name, address, or telephone number of subscribers, nor did Verizon access that information when it pulled limited E911 data from the relevant database(s).

Virginia. Verizon’s submission of E911 data does not violate Va. Code Ann. § 2.2-3705.2(10), (11). Those provisions are part of Virginia’s FOIA statute, and set forth various types of information that are exempt from FOIA requests. The relevant provisions exempt “[s]ubscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier” that is provided to public body that operates a E911 system or that is used in connection with the operation of an E911 system. Va. Code Ann. § 2.2-3705.2(10), (11). Thus, this statute is not applicable for at least two reasons. First, as noted above, Verizon has not submitted any E911 listing data that contains the name, address, or telephone number of subscribers, nor did Verizon access that information when it pulled limited E911 data from the relevant database(s). Second, this provision has nothing to do with whether Verizon can submit E911 information subject to a protective order as it did here, but instead gives government custodians of such data the ability to refuse to disclose such information to third parties.

Pennsylvania. Verizon’s submission of E911 data does not violate 35 Pa. Stat. Ann. § 7019(a). That provision provides that “Each telephone service supplier shall provide customer telephone numbers, names and service addresses to PSAPs when requested by them for use in responding to 911 calls,” and that such “information shall be used only in providing emergency response services to a 911 call or for purposes of delivering or assisting in the delivery of emergency notification services or emergency support services.” 35 Pa. Stat. Ann. § 7019(a). On its face, the statute covers only “customer telephone numbers, names, and service addresses.” As noted above, Verizon has not submitted any E911 listing data that contains the name, address, or telephone number of subscribers, nor did Verizon access that information when it pulled limited E911 data from the relevant database(s).

ATTACHMENT B

Frequently Cited Sources

Short Cite	Full Cite
ACN <i>et al.</i>	Opposition to Verizon's Petitions filed by ACN Communications Services, Inc.; Alpheus Communications, L.P.; ATX Communications, Inc.; Broadwing Communications, LLC; Cavalier Telephone Corporation; CityNet Pennsylvania, LLC; CloseCall America, Inc.; CTSI, LLC; DSLnet Communications, LLC; Eureka Telecom, Inc. d/b/a InfoHighway Communications; Globalcom, Inc.; ITC^DeltaCom Communications, Inc.; McLeodUSA Telecommunications Services, Inc.; Mpower Communications Corp.; Norlight Telecommunications, Inc.; Penn Telecom, Inc.; RCN Telecom Services, Inc.; RNK Inc.; segTEL, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; and U.S. Telepacific Corp. d/b/a Telepacific Communications, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Ad Hoc	Comments of Ad Hoc Telecommunications Users Committee, WC Docket No. 06-172 (FCC filed Mar. 8, 2007)
<i>Anchorage Forbearance Order</i>	<i>Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, As Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area</i> , Memorandum Opinion and Order, 22 FCC Rcd 1958 (2007)
<i>AT&T Non-Dominance Order</i>	<i>Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier</i> , Order, 11 FCC Rcd 3271 (1995)
Boston Decl	Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Boston Metropolitan Statistical Area, <i>attached to</i> Petition of the Verizon Telephone Companies for Forbearance (for the Boston Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
Boston Pet'n	Petition of the Verizon Telephone Companies for Forbearance (for the Boston Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
Broadview <i>et al</i>	Comments of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, and XO Communications, LLC, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)

Short Cite	Full Cite
<i>Buckingham Research/ Cable Goes Commercial Report</i>	Quasir Hasan & May Tang, Buckingham Research Group, <i>Cable Goes Commercial: Examining Cable's Next Growth Phase</i> at 20, Exhibit 14 (Jan. 11, 2007)
Cablevision/Rutledge MTE Conf. Tr.	Thomson Street Events, <i>CVC – Cablevision Systems Corp. at Banc of America Media, Telecommunications & Entertainment Conference</i> , Transcript (Mar. 28, 2007)
Cavalier	Opposition of Cavalier Telephone Subsidiaries to Verizon's Petitions for Forbearance, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
City of Philadelphia	Comments of the City of Philadelphia on the Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Philadelphia Metropolitan Statistical Area, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Comcast	Comments of Comcast Corporation, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Comptel	Opposition of Comptel (for the New York Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
cox	Comments of Cox Communications, Inc., WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
EarthLink	Opposition of EarthLink, Inc. and New Edge Network, Inc. to the Petitions of Verizon Telephone Companies for Forbearance, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Gillan Decl.	Declaration of Joseph Gillan, <i>attached to</i> Comments of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, and XO Communications, LLC at Exhibit 1, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Integra	Comments of Integra Telecom, Inc., WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
<i>LEC Classification Order</i>	<i>Regulatory Treatment & LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace</i> , Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756 (1997)
Monmouth	Opposition of Monmouth Telephone & Telegraph, Inc., WC Docket No. 06-172 (FCC filed Mar. 5, 2007)

Short Cite	Full Cite
NASUCA	Comments of the National Association of State Utility Consumer Advocates, the Pennsylvania Office of Consumer Advocate, the Public Utility Law Project of New York, Inc., the Massachusetts Office of Attorney General, the Virginia Office of Attorney General, the Maryland Office of People's Counsel, the New Jersey Division of Rate Counsel, the New Hampshire Office of Consumer Advocate, and the Connecticut Office of Consumer Counsel, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
NCTA	Comments of the National Cable & Telecommunications Association, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
NY Decl.	Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the New York Metropolitan Statistical Area, <i>attached to</i> Petition of the Verizon Telephone Companies for Forbearance (for the New York Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
NY Pet'n	Petition of the Verizon Telephone Companies for Forbearance (for the New York Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
<i>Omaha Forbearance Order</i>	<i>Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area</i> , Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005)
Phil. Decl.	Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Philadelphia Metropolitan Statistical Area, <i>attached to</i> Petition of the Verizon Telephone Companies for Forbearance (for the Philadelphia Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
Phil. Pet'n	Petition of the Verizon Telephone Companies for Forbearance (for the Philadelphia Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
Pitt. Decl.	Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Pittsburgh Metropolitan Statistical Area, <i>attached to</i> Petition of the Verizon Telephone Companies for Forbearance (for the Pittsburgh Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)

Short Cite	Full Cite
Pitt. Pet'n	Petition of the Verizon Telephone Companies for Forbearance (for the Pittsburgh Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
Providence Decl.	Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Providence Metropolitan Statistical Area, <i>attached to</i> Petition of the Verizon Telephone Companies for Forbearance (for the Providence Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
Providence Pet'n	Petition of the Verizon Telephone Companies for Forbearance (for the Providence Metropolitan Statistical Area). WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
<i>Q2 2005 Sprint Corp. Earnings Conference Call</i>	<i>Q2 2005 Sprint Corp. Earnings Conference Call -- Final</i> , FD (Fair Disclosure) Wire, Transcript 072705aq.731 (July 27, 2005)
<i>Qwest 272 Forbearance Order</i>	<i>Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply after Section 272 Sunsets</i> , Memorandum Opinion and Order, WC Docket No. 05-333 (rel. Mar. 9, 2007)
Selwyn Decl	Declaration of Lee L. Selwyn on behalf of the Ad Hoc Telecommunications Users Committee, <i>attached to</i> Comments of Ad Hoc Telecommunications Users Committee, WC Docket No. 06-172 (FCC filed Mar. 8, 2007)
Sprint	Sprint Nextel Corporation's Opposition to Petitions for Forbearance, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Telecom Investors	Telecom Investors Opposition to Verizon's Petitions, WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Time Warner Cable	Comments of Time Warner Cable. WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
Time Warner Telecom	Opposition of Time Warner Telecom Inc., Cbeyond Inc., and One Communications Corp., WC Docket No. 06-172 (FCC filed Mar. 5, 2007)
<i>Triennial Review Order</i>	<i>Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i> , Report and Order and Order on Remand and Further Notice of Proposed Rulemaking. 18 FCC Rcd 16978 (2003)

Short Cite	Full Cite
<i>Triennial Review Remand Order</i>	<i>Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers</i> , Order on Remand, 20 FCC Rcd 2533 (2005)
Va. Beach Decl.	Declaration of Quintin Lew, Judy Verses, and Patrick Garzillo Regarding Competition in the Virginia Beach Metropolitan Statistical Area, <i>attached to</i> Petition of the Verizon Telephone Companies for Forbearance (for the Virginia Beach Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
Va. Beach Pet'n	Petition of the Verizon Telephone Companies for Forbearance (for the Virginia Beach Metropolitan Statistical Area), WC Docket No. 06-172 (FCC filed Sept. 6, 2006)
<i>Verizon/MCI Order</i>	<i>Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control</i> , Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005)
VSCC	Comments of the Virginia State Corporation Commission, WC Docket No. 06-172 (FCC filed Dec. 15, 2006)
<i>Wireline Broadband Order</i>	<i>Appropriate Framework for Broadband Access to the Internet over Wireline Facilities</i> , Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005)



C

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Petitions of Verizon Telephone Companies
For Forbearance Pursuant to 47 U.S.C. §160(c)
in the Boston, New **York**, Philadelphia,
Pittsburgh, Providence and Virginia Beach
Metropolitan Statistical Areas

WC Docket No. 06-172

**DECLARATION OF WILLIAM E. TAYLOR
ON BEHALF OF VERIZON**

SUMMARY

1. I have been asked to respond to the declarations of Lee L. Selwyn and Joseph Gillan¹ concerning Verizon's petitions for forbearance in six MSAs. Dr. Selwyn asserts (*at ¶ 2*) that Verizon "maintains overwhelming market dominance" for mass market and enterprise services and that most competition is "critically dependent" on the use of Verizon wholesale facilities. Dr. Selwyn's analysis is flawed in multiple respects. With respect to mass market services, Dr. Selwyn's data cannot be reproduced from the sources he cites, confuses state data for ILECs as a whole with that for Verizon, misinterprets the FCC Local Competition Reports by ignoring the fact that those reports now separately report data for residential customers, as opposed to residential and small business combined. Dr. Selwyn also miscalculates access line shares by ignoring wireless substitution and failing to account for the known undercount of access lines provided by VoIP-based CLECs. With respect to enterprise services, Dr. Selwyn omits certain

¹ Declaration of Lee L. Selwyn, on behalf of the Ad Hoc Telecommunications Users Committee, March 5, 2007 ("Selwyn Declaration"). Declaration of Joseph Gillan, Exhibit I to the Comments of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, and XO Communications, LLC, March 5, 2007 ("Gillan Declaration").

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3. In summary, neither Dr. Selwyn nor Mr. Gillan provides any reasoned economic basis for disputing the conclusion — that there is extensive facilities-based competition measured using the Commission’s *Omaha* framework — reached in the six Petitions and supporting Declarations filed by Verizon.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Petitions of Verizon Telephone Companies
For Forbearance Pursuant to 47 U.S.C. §160(c)
in the Boston, New York, Philadelphia,
Pittsburgh, Providence and Virginia Beach
Metropolitan Statistical Areas

WC Docket No. 06-172

I. Introduction and Background

4. My name is William E. Taylor. I am Senior Vice President of National Economic Research Associates, Inc., head of its Communications Practice, and head of its Boston office located at 200 Clarendon Street, Boston, Massachusetts 02116.

5. I have been an economist for over thirty years. I earned a Bachelor of Arts degree from Harvard College in 1968, a Master of Arts degree in Statistics from the University of California at Berkeley in 1970, and a Ph.D. from Berkeley in 1974, specializing in Industrial Organization and Econometrics. I have taught and published research in the areas of microeconomics, theoretical and applied econometrics and telecommunications policy at academic and research institutions including the Economics Departments of Cornell University, the Catholic University of Louvain in Belgium, and the Massachusetts Institute of Technology. I have also conducted research at Bell Laboratories and Bell Communications Research, Inc. I have appeared before state and federal legislatures, testified in state and federal courts, and participated in telecommunications regulatory proceedings before state public utility commissions, as well as the Federal Communications Commission, the Canadian Radio-television Telecommunications Commission, the Mexican Federal Telecommunications Commission and the New Zealand Commerce Commission.

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II. Mass-Market Customers have Facilities-Based Alternatives to Verizon's Services

6. Dr. Selwyn asserts[at ¶ 3] that Verizon exaggerates the actual extent ~~of~~ competition *for* mass-market services, alleging two reasons:

- that Verizon's line losses are largely "due to the replacement of second residential access lines with high-speed Internet access services, a substantial portion of which was retained by Verizon as ADSL services" and
- that [at ¶¶ 7-81 the majority of competitively-supplied switched access services still require the use of Verizon facilities either as UNEs or as resale lines.

Both claims are factually incorrect and the first is also economically incorrect.

A. Verizon's line loss and growth in broadband service

1. Factual errors

7. Contrary to Dr. Selwyn's implication, Verizon's line losses cannot largely be explained by the decrease in demand for its non-primary lines. To the contrary, most of the loss in access lines is due to intermodal competition, from cable, wireless, and VoIP services.

8. For the states' and time period at issue, the reductions in Verizon's primary residential lines were far greater than the reduction in Verizon's non-primary lines. Table I below shows by state the change in Verizon's total, primary and non-primary lines from 2002 to 2006. As can be seen, the aggregate reduction in Verizon's primary lines is far greater than the aggregate reduction in its non-primary lines. In the states in question, Verizon lost approximately 3.5 million primary lines, compared with only 1.9 million non-primary lines during the 2002-2006 period. Contrary to Dr. Selwyn's implication, Verizon's line losses cannot largely be explained by the decrease in demand for its non-primary lines.

⁷ Verizon's Forbearance Petitions and Declarations are based on Metropolitan Statistical Areas ("MSAs"). Most FCC data is only available at a statewide level, so Dr. Selwyn's numbers — and my criticisms of those numbers — necessarily pertain to the states in which the relevant Verizon MSAs are located.

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Table 1.
Change in Verizon primary and non-primary residential lines
2002-2006

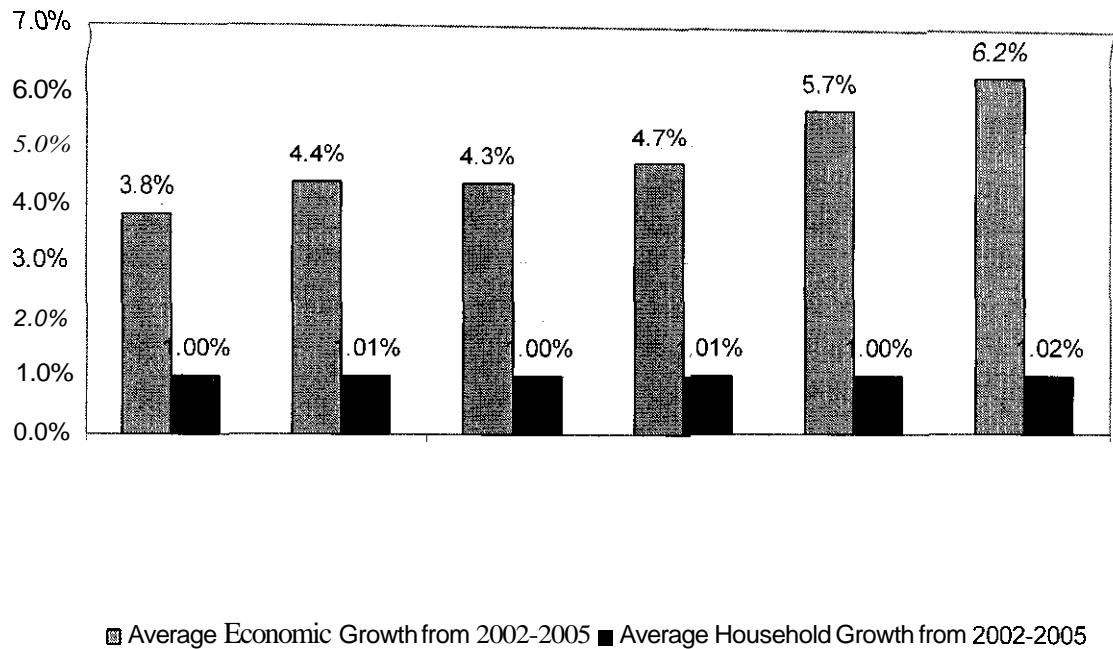
<i>State</i>	<i>Primary lines</i>	<i>Non-Primary lines</i>	<i>Total lines</i>
MA	-359,089 -17.1%	-173,879 -51.3%	-532,968 -21.9%
NJ	-575,392 -18.8%	-623,345 -56.8%	-1,198,737 -28.8%
NY	-1,612,696 -26.8%	-514,041 -51.3%	-2,126,737 -30.3%
PA	-475,442 -12.7%	-341,999 -52.6%	-817,441 -18.6%
RI	-115,013 -35.4%	-23,527 -61.2%	-138,540 -38.2%
VA	-396,685 -18.2%	-207,525 -55.6%	-604,210 -23.7%
Total	-3,534,317 -20.3%	-1,884,316 -53.8%	-5,418,633 -25.9%

Source: Residential Lines 2002-2006; FCC ARMIS Report 43-08, Table III

9. It is important to note that Verizon primary line losses have occurred during a period of robust economic growth and growth in the number households, two factors that would cause the demand for telephone lines to increase. The figure below shows average economic growth and growth in households during the 2002-2005 period in the six Verizon states used in Table 1. As can be seen, strong economic growth in the states coupled with positive growth in households would have resulted in positive gains in Verizon lines but for the existence of intermodal competition.

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Figure 1. Gross state product (GSP) and household growth by state, 2002-2005



Source: Bureau of Economic Analysis, U.S. Department of Commerce, at <http://www.bea.gov/regional/gsp/> and U.S. Census Bureau, (<http://www.census.gov/popest/datasets.html> under 'Housing Unit Datasets')

10. The financial community has recognized the impact that intermodal competition is having on the demand faced by Verizon and other ILECs' primary and not just secondary access lines. For example, a JP Morgan report states:

We expect cable and other VoIP providers to increase share of primary residential voice lines from 4.2% in 2004 to 28.0% by 2010. We believe the ILECs' share will decline from 85.1% to 69.4%, while the CLECs' share should decline from 10.7% to 2.7%. We estimate that Comcast will gain the most share among the MSOs, with 11% share of primary lines by 2010 followed by Time Warner with 5%. We estimate that Verizon will lose the most share among the major ILECs, while AT&T and Qwest should see less pressure than peers.'

³ JP Morgan. Telecom Services/Wireline State of the Industry: Consumer, January 13, 2006, at 4

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Loss of primary access lines is financially more significant since customers generally buy packages of usage and vertical services together with the primary access line. Customers can drop a secondary access line without shifting those additional services to another provider. Also, these intermodal competitors do not need to purchase Verizon's UNEs or other wholesale services to furnish services to these customers. All they require is network interconnection in the same manner that Verizon needs to purchase interconnection from them.

11. There are additional factual problems with Dr. Selwyn's table. First, Dr. Selwyn's table has data and methodology errors that make the analysis unreliable and the conclusions incorrect. For example, the data in the row entitled "VZ Res switched access lines – 2000" are not reproducible or verifiable from the data source cited? In addition, prior to 2005, the FCC's Local Competition Report—as well as its High-speed Services for Internet Access Report—provided information on residential and small business lines in one category. Beginning in 2005, the residential lines category contains only residential lines, and the small business lines are reported in the business category. Thus, it is incorrect to calculate the change for residential end user lines or residential high-speed lines from 2000 to 2006 because the line counts in 2006 are not comparable to those in 2000.

12. To correct this error, Table 2 below calculates the change in ILEC residential and small business lines and high speed lines from 2002-2004 and then the change in ILEC residential lines and high-speed lines from 2005-2006, putting the two data series on a comparable basis. Of particular interest is the more recent *change*. According to the table, in the states in question, ILECs lost approximately 3.76 million lines during 2005-2006, a significantly greater loss than the corresponding gain in high-speed lines of 2.5 million. Contrary to Dr. Selwyn's assertion, ILEC line losses have not been due primarily to the migration of secondary access lines to

⁴ The FCC's Local Competition Report—which is cited as the source for the table—does not exhibit company-specific data. Rather, it shows state-wide data for all ILECs, so the rows in the table referring to Verizon should actually refer to ILECs. But this problem does not explain why the numbers are wrong, because the ILEC residential switched access lines in 2000 for the states in question are lower than those reported in the table. For June 2006, the table is correct if "ILEC" is substituted for "VZ" in the data description. According to the table, Verizon lost 3.273 million residential lines in New York during the 2000-2006 period. In fact, according to the data source cited, all ILECs in New York lost 2.677 million total lines. That is, the FCC Local Competition Report shows (Table 6) 10,962,969 ILEC end user lines as of December 2000 and (Table 10) 8,285,874 end user lines as of June 2006. Every data entry in the first row of the table is incorrect.

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broadband services. Rather, ILECs are losing primary and secondary access lines to a broad range of competitors.

Table 2.
Change in ILEC residential (and small business) lines
and high-speed lines in ILEC territories, 2002-2006

	Change in Residential and Small Business Lines		Change in ADSL	Change in Residential Lines		Change in ADSL
	(2002-2004)		(2002-2004)	(2005-2006)		(2005-2006)
<i>State</i>	<i>ILEC Switched Access</i>	<i>High Speed</i>	<i>ADSL</i>	<i>ILEC Switched Access</i>	<i>High Speed</i>	<i>ADSL</i>
MA	-329,821	515,704	121,111	-524,136	286,606	NA
NJ	-821,791	940,512	175,334	-700,147	431,663	194,485
NY	-987,160	867,217	249,635	-1,058,606	864,409	264,249
PA	-434,979	797,053	236,002	-652,370	552,734	329,890
RI	-72,021	79,238	NA	-80,311	34,451	NA
VA	-547,001	549,051	157,550	-747,183	331,438	132,043
Total	-3,192,773	3,748,775	939,632	-3,762,752	2,501,301	920,667

Source: FCC Local Competition & High-speed Reports, Dec. 2002, Dec. 2004, June 2005, June 2006

In addition, Dr. Selwyn's suggestion that Verizon's loss of mass-market switched access lines is mitigated by its gain in ADSL subscribers is also unfounded. FCC data in Table 2 show that the reduction in ILEC mass-market switched access lines far exceeds the increase in total (ILEC, CLEC and DLEC, mass-market and enterprise market) ADSL subscribers.⁵ And, of course, the increase in total ADSL subscribers exceeds the portion of those customers that represents Verizon residential customers substituting a switched access line for ADSL access to the Internet.

⁵ FCC, "High Speed Services for Internet Access: Status as of June 30, 2006," January 2007, ("High-speed Report"), Table 11. High-speed Report: Status as of December 31, 2004, Table 9. "NAs" indicate that data was withheld to maintain firm confidentiality.

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2. Competitive implications of the substitution of Verizon broadband for Verizon non-primary lines

13. The fact that some proportion of Verizon non-primary lines is lost to Verizon DSL services does not, as Dr. Selwyn claims, **imply** that Verizon “exaggerates and overstates the actual extent of competition it confronts.” Broadband services are competitively provided by many firms other than Verizon, using a variety of technologies, including coaxial cable, DSL, fiber, mobile wireless, fixed wireless, satellite, power lines and others. Verizon cannot control the market price (*or* other terms and conditions) of broadband services, and every mass-market access line it loses to broadband services — its own or those of its competitors — represents a constraint on its ability to increase its narrowband access line prices

B. Verizon’s share of underlying switched access lines is falling

14. Dr. Selwyn [at ¶¶ 7-8] asserts that the majority of competitively-supplied switched access services still require the use of Verizon facilities, either as UNEs or as resold lines. A table [at ¶ 7] purports to show the share of ILEC underlying switched access lines in service, and Dr. Selwyn concludes that ILECs retain a very high share of underlying switched access line services.

1. Reliance on shares of access lines is misguided

15. At the outset, calculations of shares of access lines, *or* even of properly-defined market shares, are not helpful in assessing the need for regulatory forbearance because such data are inherently backward-looking. The current level of a market share measure fails to show the relevant measure of competition, *i.e.*, from this time forward. This shortcoming is particularly important in telecommunications, which is a pervasively-regulated industry making the transition to competition during a period of rapid technological change. That Verizon was the regulated, franchised provider of telecommunications services to most customers in the territory it serves

⁶ Selwyn Declaration ¶ 3.

gave it a legacy share of customers in that market, which is misleading in assessing Verizon's competitive prospects in the market going forward.

16. Complete, accurate and relevant market share data are difficult, if not impossible, to gather given the competitors' refusal and/or inability to provide data reflecting their own activities in the market and the providers' tendencies to measure data differently. Such difficulties are compounded by the fact that (1) convergence of technologies has stimulated intermodal competition that most market share studies do not (indeed, often cannot) capture; (2) customers typically chose between bundles of traditional services that include at least local, toll, voice and data services, and measuring a providers' "local" market share does not begin to capture the full competitive picture; and (3) competition has expanded well beyond traditional wireline boundaries to include new competitors such as VoIP providers whose shares are virtually impossible to measure. This expansion makes it more difficult to measure market shares because certain intermodal competitors—e.g., VoIP and wireless providers do not confront the same regulatory reporting requirements that Verizon and traditional wireline competitors do.' Thus, even though CLECs have to file certain information with the Commission, it is still not possible to get a complete snapshot of the entire marketplace and an accurate measure of market share. Dr. Selwyn's share of access lines, even if accurate, does not begin to provide that information.

2. Errors in Dr. Selwyn's share calculation

17. The table [at ¶ 6] of Dr. Selwyn's Declaration purports to measure the "ILEC share of underlying switched access line services." On the contrary, the FCC source relied on by Dr. Selwyn undercounts the number of CLEC-owned lines presented in the fifth row of that table. Specifically, cable telephony lines are underreported in the FCC's Local Competition Report. The latest FCC data (national for June 2006) show fewer than 6 million coaxial cable telephony access *lines*,⁸ but a sum of the second quarter 2006 total telephony *subscribers* from the nine

⁷ Moreover, even those competitors that have to report their data **do so** at an aggregate level.

⁸ FCC Local Competition Report: status as of June 2006, Table 5.

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largest cable MSOs yields more than 7 million subscribers.⁹ These nine companies reported over 1 million (or 18 percent) more voice subscribers than the FCC reported for total cable *lines* of all carriers as of June 2006. Since a single subscriber can have multiple lines, the underestimate of lines in the FCC Report is even larger than the 1 million (18 percent) figure would suggest.

18. Another problem with Dr. Selwyn's share calculation is that it ignores wireless alternatives and does not fully capture competition from over-the top VoIP providers. The more than 40 million wireless subscribers in the six Verizon states are completely ignored." Dr. Selwyn's analysis even ignores the households that were wireless only in 2005, which unambiguously consist of residential customers with a dial-tone access line that is not an ILEC retail or resold switched access line. Even the data on which Dr. Selwyn relies, however, estimate that approximately 10 percent of households are wireless only."

19. With respect to VoIP, the regulatory classification of local exchange service provided by VoIP technology is the subject of an open FCC Docket and helps explain why competition from these providers is underreported in the FCC Local Competition Report.¹² The instructions for FCC Form 477, which is the input for the Local Competition Report, do not currently require carriers to report local service access lines served via VoIP. If the FCC determines that such services are telecommunications services, then carriers may be required to report VoIP access service arrangements in Form 477, but they were not required to do that in the data cited by Dr. Selwyn.

⁹ The nine cable MSOs are Comcast, Cablevision, Time Warner Cable, RCN, Charter, Cox, Mediacom, Bright House Networks, and Insight Communications. The second quarter 2006 cable telephony subscribers are taken from the individual company financial earning press releases.

¹⁰ Data from the FCC local competition report, status as of June 2006, table 14.

¹¹ While estimates of the size of the "cord-cutting" population vary, this estimate of 10 percent comes from the data source cited by Dr. Selwyn [at ¶ 4, footnote 2]: Industry Analysis and Technology Division, FCC. *Trends in Telephone Service*, February 2007. Table 7.4.

¹² IP-Enabled Services, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863. The FCC states: "[t]he regulatory status of local telephone service provided by VOIP is the subject of an open proceeding. *IP-Enabled Services*, WC Docket No. 04-36. *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2004). When the Commission adopted modifications to the Form 417, in November 2004, it rejected suggestions that it add questions soliciting information about local telephone service as provided by entities exclusively utilizing VoIP. The Commission noted that entities that are filing local telephone service information on Form 411 may already include information about VOIP service in their filings." See http://www.fcc.gov/broadband_data_faq.html#exemptions.

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20. Quantitatively, Dr. Selwyn is thus incorrect when he asserts [at ¶ 8] that Verizon enjoys overwhelming dominance in the switched access line market and that the overwhelming majority of *competitive services* are themselves dependent upon the availability of Verizon facilities at prices that make such competition feasible. Conceptually, he ignores the fact that competitors are increasingly relying on Verizon's Wholesale Advantage services, services that are based upon voluntary, market transactions between two parties. Competitors that purchase these wholesale services do so with the belief that they can earn a profit. While competitors are using Verizon's network when they purchase Wholesale Advantage, they are, in essence, no more "dependent" upon Verizon's inputs than other input buyers in a market economy. For example, competitors could deploy their own infrastructure (the make decision) or purchase the input (the buy decision) from Verizon or other providers.

C. CLECs are losing business to intermodal competitors as well

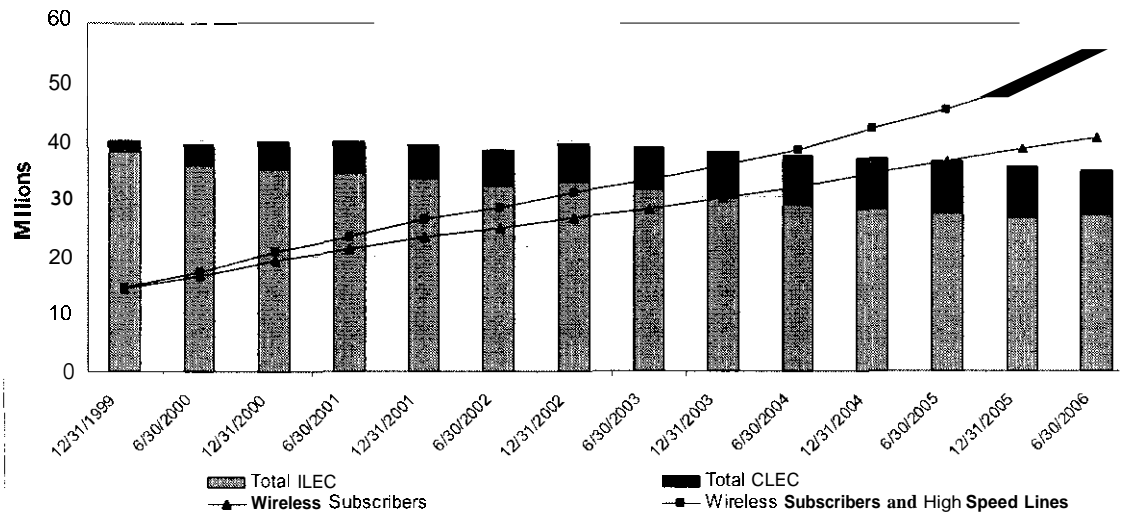
21. Dr. Selwyn [at ¶ 34] points to the recent FCC Local Competition Report to support his claim that CLEC lines are "plummeting," especially for mass market customers [at ¶ 36]. He uses the difference between CLEC retail switched access lines in June 2004 and June 2006 to assert that competition in local telecommunications markets is shrinking rather than growing, but for the reasons discussed below, this conclusion is incorrect.

22. First, while Dr. Selwyn claims that "[e]ven within the states that include the six MSAs for which Verizon seeks forbearance, the same overall results can be observed," his table at ¶ 35 shows *increasing* CLEC retail switched access lines in two of the six states. Second, while Dr. Selwyn points to a "plummeting" of CLEC *residential* access lines between mid-2004 and mid-2006 of 41 percent, he neglects the fact that the reduction in *total* (business plus residential) CLEC access lines over that period was only 7 percent.¹³ Third, the fact is that all wireline

¹³ Errata, tiled April 11, 2007 by the Ad Hoc Telecommunications Users Committee, ¶ 34. Total CLEC access lines fell from approximately 32 million in June 2004 to approximately 30 million in June 2006: FCC Local Competition Report Status as of June 2006, Table 1. Even this reduction is likely overstated, however, because

carriers — not just ILECs but also traditional wireline CLECs — are losing residential and *business customers to intermodal carriers such as* wireless, cable telephony, and VoIP over broadband suppliers. Figure 2 below shows that the combined ILEC and CLEC business has been declining at the same time that **wireless** and broadband competition has increased. The fact that CLECs are losing lines too does not mean that ILECs should continue to subsidize them.

Figure 2.
ILEC, CLEC, Wireless and High-speed lines in NY, NJ, MA, PA, RI, VA
1999-2006



Source: FCC Local Competition and High Speed Reports, June 2006

Specifically, Figure 2 shows that the combined ILEC and CLEC business has been in decline since December 2002.¹⁴ Indeed, the JP Morgan report cited earlier predicts that the CLECs and ILECs' share of the market will continue to decrease, reflecting competition from intermodal competitors.¹⁵

the FCC June 2006 report misses at least 1 million cable telephony lines and includes the effect of reclassifying in-region AT&T and MCI CLEC lines as ILEC lines. See ¶¶ 17 and 23.

¹⁴ The slight increase in ILEC lines and large decrease in CLEC lines in June 2006 is largely explained by the fact that former MCI CLEC lines were reclassified as ILEC lines. See **below**.

¹⁵ JP Morgan, Telecom Services/Wireline State of the Industry Consumer, January 13, 2006, at 4.

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23. Third, while the table at ¶ 35 of the Selwyn Declaration paints a gloomy picture of CLEC competition between June 2004 and June 2006, his analysis is flawed. Most of the decline in CLEC retail switched access lines during this period is explained by the Verizon-MCI and the SBC-AT&T mergers and has nothing to do with the likely course of competition in these MSAs. Beginning in June 2006, former MCI and AT&T CLEC lines were reclassified as ILEC lines in Verizon and SBC service territories, respectively, and this fact largely accounts for the drop in CLEC lines during the time period. But, because the merger had no negative impact on competition in for mass-market or enterprise customers — as determined by the FCC and the Department of Justice — this reclassification was of no competitive significance. Hence, contrary to Dr. Selwyn's implication, the artificial reduction in CLEC lines as a result of the merger does not suggest that the competitive process is slowing in the MSAs for which Verizon seeks forbearance.

111. Enterprise Customers have Facilities-Based Alternatives to Verizon's Services

24. Dr. Selwyn asserts [at ¶ 9] that Verizon's share of the market for enterprise services is "so overwhelming that forbearance for that market does not merit serious consideration," based on a table that purports to show a high Verizon share of voice-grade-equivalent access lines ("VGEs"). Dr. Selwyn's characterization of competitive conditions in the enterprise market is completely at odds with the FCC's findings in previous cases, where it has recognized that fundamental economic conditions for enterprise services make it a highly attractive target for competitors. As the FCC stated in the Verizon-MCI Merger Order:

We find that competition for medium and large enterprise customers should remain strong after the merger because medium and large enterprise customers are sophisticated, high-volume purchasers of communication services that demand high-capacity communications services, and because there will remain a significant number of carriers competing in the market."

¹⁶ *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433 ¶ 56 (2005) (*Verizon/MCI Order*).

25. Enterprise customers typically have locations in different states or countries and in the service territories of different ILECs. Reflecting those facts, the FCC has determined that the *relevant geographic market for enterprise customers* is “a single national market.”¹⁷ Enterprise customers, particularly large enterprise customers, demand a range of communications services and equipment, including: internal (voice and data) networking equipment to link their employees at a given location or across different offices in different places; communications links to their customers and suppliers, again including voice and data and, in some cases, video services. Thus, in many cases they may seek to purchase an integrated bundle of products and services. Yet they are sufficiently sophisticated that they can purchase individual components of the bundle or use multiple sources to ensure route diversity. This dual approach allows different types of firms to compete to serve enterprise customers.

26. Large enterprise customers use a range of purchasing techniques to ensure that their demands are met as economically as possible. Some may seek all their services from a single source, while others may contract with different service providers (either to receive different services from each or to ensure backup if supply from one service provider is disrupted). Their service procurement or purchase methods may vary, ranging from Requests for Proposals (“RFPs”), auctions and contracts, on one end of a continuum, to informal negotiations or catalog purchases on the other. The FCC has acknowledged that “[l]arger business customers in general tend to be more sophisticated and knowledgeable purchasers of telecommunications services than mass market customers.”¹⁸ That is, they have staff (or consultants) with specialized knowledge of communications technologies and procurement practices that are dedicated to the purchase of those services. When services are sold through contracts and RFPs with multiple providers — as they are for enterprise services — it is difficult to understand how the competitive process is aided by restrictive regulation on one of those providers.

¹⁷ See, e.g., *MCI/WorldCom Order*, ¶30 or the *Bell Atlantic/NYNEX Order*, ¶54.

¹⁸ FCC, In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184, Memorandum Opinion and Order, June 16, 2000, 7121.

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27. Many medium-sized business customers buy similar types of integrated telecommunications packages. They use the same purchasing methods as large customers, such as, for example, the RFP process and/or consultants to obtain many of the purchasing advantages of large enterprise customers. Many medium-size businesses also face choices that are similar to those of large businesses. Many firms that compete to sell services to large enterprise customers also compete to serve medium-size businesses. Thus, medium sized businesses that employ such purchasing practices should be considered to be part of the enterprise segment.

28. Given these purchasing patterns, a host of competitors, including global network service providers (“GNSPs”), systems integrators, equipment providers, CLECs/DLECs, and IP applications providers, all compete to supply the largest possible share of the equipment and services needed by enterprise customers. Moreover, these service providers themselves depend, to a greater or lesser degree, on multiple equipment vendors and may collaborate with several facilities-based carriers to create a network that can serve commercial and institutional customers.

29. The competitiveness of the enterprise market is reflected by numerous indicia including: the significant loss of Verizon retail business lines, the number, size and types of companies competing for this business (interexchange carriers, competitive LECs, cable companies, other incumbent LECs, system integrators, and equipment vendors), the amount of competitor facilities that have been deployed and success of competitors in serving customers. These data are provided in the *Lew/Verses/Garzillo Declarations* for Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach MSAs and they confirm the existence of robust competition for enterprise customers.

30. Dr. Selwyn’s reliance on market share data to reach conclusions about competitive conditions in the enterprise market is flawed, for the reasons I discussed previously. Market share calculations in telecommunications are generally backward looking and not a good indicator of forward-looking market conditions. Use of market share is even more problematic with respect to enterprise services. The service provider’s market share – whether “high or “low” – makes less difference under RFP-driven procurement practices than in markets not dominated by RFP procurement. Since bidders that can provide similar services at comparable

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values — regardless of their market share — have a chance of winning the bid, the number of bidders and the value of their product are more important than their share of outcomes in the market. *This fact has been recognized in the 1992 Merger Guidelines of the U.S. Department of Justice and the Federal Trade Commission.*” Thus, measuring access lines in the **six** Verizon **MSAs** does not adequately characterize the market for enterprise services. Since Verizon competes through RFPs to provide services for multinational, multi-location enterprise customers, the number of access lines in a particular **MSA** in Verizon’s traditional service territory is not a relevant determinant of the vigor of competition that Verizon faces.

31. Moreover, measuring shares of the enterprise market is even more difficult than for the mass market. Consider, for example, that system integrators generally have no facilities-based voice-grade-equivalent access lines at all. The table [at ¶ 9] which purportedly calculates Verizon’s share of voice-grade equivalent (VGEs) circuits is thus misleading for several reasons. First, it does not include any measure of the competitive effect of suppliers such as system integrators and equipment vendors. As recognized by the FCC, these businesses are legitimate competitors in the supply of enterprise services and their influence must be included in any measure of the degree of competition in the market.” Second, the table does not take into account non-Verizon special access voice-grade-equivalent circuits. The *Verizon Declarations* discuss the competing carriers that operate fiber networks in the different MSAs, as well as other pertinent information about competitive activities not captured by simple measures of VGE access lines. In the *Verizon/MCI Order*, the FCC identified a number of these companies as market participants in the provision of “Type I” and “Type II” special access services in the Verizon territories.²¹

¹⁹ U.S. Department of Justice and Federal Trade Commission, *1992 Horizontal Merger Guidelines* (revised April 8, 1997), Section 1.41, fn. 15.

²⁰ *Verizon/MCI Order* at ¶ 64, recognizing also interexchange carriers, competitive LECs, cable companies, and other incumbent LECs.

²¹ Type I special access services are services offered wholly over a carrier’s own facilities whereas Type II special access services are services offered using a combination of the carrier’s own facilities for two segments and the special access services of another carrier for the third segment of the service. The FCC identified more than 25 companies as market participants in the provision of Type I and Type II special access services in Verizon’s territory, see *Verizon/MCI Order* ¶ 30.

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